

(2008) 11 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 3965 of 1997

Digambar Ambadas Magar (died through L.Rs. Indubai
Digambar Magar and Others)

APPELLANT

Vs

The State of Maharashtra, Municipal Council and Deputy
Director

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 174

Citation : (2009) 3 BomCR 461

Hon'ble Judges : S.R. Dongaonkar, J;Naresh H. Patil, J

Bench : Division Bench

**Advocate : K.D. Bade Patil, for the Appellant; K.B. Choudhary, A.G.P. for
Respondent No. 1, R.V. Naiknavare and K.G. Ghute Patil Advocate, for the
Respondent**

Final Decision : Allowed

Judgement

S.R. Dongaonkar, J.—The Petitioner by this Petition, claims a direction to Respondent No.2 and No.3 to make payment of compensation of the Petitioner's land which was acquired from Survey No.128/1 situated within the area of Municipal Council, Osmanabad for construction of D.P. Road, with solatium and interest.

2. According to the Petitioner, he is the owner of land Survey No.128/1 situated in Osmanabad Municipal Council area. The same was taken into possession by Respondent No.2 and No.3 for the development and constructing D.P. Road, 12 Meter wide from T.V. Centre to Ramnagar and from T.V. Centre to Irrigation Colony, Osmanabad. It was in accordance with the development plan of Osmanabad. It is alleged that Respondent No.2 and No.3 approached to the Petitioner and requested for giving possession of the land mentioned above for the construction of D.P. Road and by way of mutual understanding between the Petitioner and Respondent No.2 and No.3, Petitioner agreed by way of private

negotiations, to handover the possession of the said land to Respondent No.2 and No.3, subject to condition that the compensation would be paid along with solatium and interest to the Petitioner. Accordingly possession was taken and the Road was constructed. It is alleged that this acquisition of land was in pursuance to the Municipal Council Resolutions as well as the consent and approval. According to the Petitioner, it was agreed that the Town Planning Department would determine the quantum of compensation and the same would be paid to the Petitioner alongwith solatium and interest as stated above. Accordingly, Town Planner by his proposal dated 7/9/1996, recommended the compensation of Rs.11,70,720/- (Rs. Eleven Lakh Seventy Thousand and Seven Hundred Twenty only). Accordingly the proposal was sent for financial assistance to the Osmanabad Municipal Council for the appropriate amount as per the Scheme and relevant Government Resolutions. It is claimed by the Petitioner that only 50% amount of the settled compensation was paid and the balance amount, so also solatium and interest was not paid. Hence Petitioner, claimed those amounts by way of this Writ Petition.

3. When the matter was heard, it was informed that during the course of the proceedings, total compensation of Rs.11,70,720/- was paid. However, solatium and interest, according to the Petitioner, which was payable as per agreement was not paid. Hence Petition is continued for those reliefs only.

4. Respondent No.2 raised a contention that the Petitioner was not entitled for any compensation in as much as land Survey No. 128 which was owned by the Petitioner, was converted into plots illegally and same were sold to various persons. It is claimed that the land which is alleged to have been acquired, was already in possession of the Municipal Council and the Road was already existing there since 1977 therefore there was no question of fresh acquisition of the land for the Road. According to this Respondent, in view of the provisions of Section 174 of the Maharashtra Municipal Council Act, as it was a public Road, it vested with the Municipal Council on nominal payment of compensation of Re. 1/-. It is claimed that the entire subject matter was a matter of grabbing public money without any right by the Petitioner and as such enquiry was to be held. In any case, as the Petitioner's land was not acquired for the construction of D.P. Road as alleged, he was not entitled for any compensation.

5. The Respondent No.4, in reply, made submissions about the determination of the compensation at the instance of the parties to the Petition. 50% of the compensation, according to him, was to be paid to the Respondent No.2 Municipal Council, as loan and 50% as grant in aid. Accordingly the proposal for financial assistance to the Municipal Council for 50% loan i.e. for Rs.5,85,360/- was made; and the said assistance was furnished. The amount in turn, was paid to the Petitioner. However, a case is raised that there were complaints as regards payment to the Petitioner in respect of this amount . As there were complaints to the effect that this land was already in possession of the Municipal Council and there was no fresh acquisition, this Respondent, directed that the title of the

Petitioner to the land should be verified and the fact whether in fact the aforesaid land was taken into possession by Municipal Council, should also be verified. Therefore, a question was raised as to whether the Petitioner is having title to the said land, so also whether his land was in fact taken into possession by the Municipal Council for construction of the D.P. road as alleged.

6. It may be stated that during the course of the proceedings of this Petition, the Town Planner had filed the calculation of compensation for the said land including solatium and interest as per the provisions of the Land Acquisition Act.

7. Learned counsel for the Petitioner submitted that though the claim for compensation does not survive now, the Petitioner's claim for solatium and interest need to be granted in view of the calculation of compensation, solatium and interest placed on record by the Town Planner as per affidavit dated 30/11/2000. According to him, the material documents are placed on record, particularly, the letters written by the Petitioner to the C.E.O. Municipal Council, Osmanabad, the minutes of the meeting of the Municipal Council dated 15/1/1990 stating that it was informed by C.E.O. and City Engineer that compensation for the acquisition of the land from Survey No.128 for D.P. Road was not paid, minutes of the meeting dated 20/10/1995 that compensation is required to be paid to the land owner of Survey No.128 need to be paid after getting it quantified from Town Planner, Osmanabad. So also the letter written by C.E.O. to Town Planner in respect of valuation of the said land dated 19/7/1996 and also the order dated 7/9/1996 which mentions that there was acquisition of land for the Road from T.V. Centre to Ramnagar and T.V. Centre to Irrigation Colony, 12 meter wide, of which the assistance to the Municipal Council was to be made to the tune of Rs.5,85,000/-. According to the learned counsel all these documents would show that the land in question was taken into possession by Respondent No.2 and No.3 for the construction of D.P. Road from Survey No.128, which was admittedly owned by the Petitioner. According to him further, it is not established that the said Road was in existence since 1977 out of the lay out and it vested with the Municipal Council on nominal payment of compensation of Re.1/- in pursuance of the provisions of the Maharashtra Regional and Town Planning Act and Maharashtra Municipal Councils Nagar Panchayat and Industrial Townships Act. Therefore according to him, once the land is proved to be taken into possession by Respondent No.2 and No.3 and compensation is paid by it, the liability of solatium and interest would follow. Therefore according to him, this Petition should be allowed and the Respondents be directed accordingly. 8. As against this learned counsel Shri Ghute Patil for the Respondent Municipal Council submitted that the Petitioner is playing fraud to grab the public money by claiming compensation for the land, in which the Road was already existing since 1977. There was no fresh acquisition of land for construction of D.P. Road. According to him, the enquiry into the episode was ordered and the Collector has submitted his report to this Court on 28/11/2000 whereby it is found that the Petitioner had illegally laid lay out in the aforesaid land and the plots were illegally sold. To prove the same, the alleged sale deeds etc. have been filed on

record along with the notices issued to the relevant plot owners for further action. It is also contended that the said land has been put to non agricultural use unauthorizedly and therefore action was warranted against the Petitioner. In any case, he submitted, Petitioner is not entitled for compensation much less solatium and interest, and the Respondent Municipal Council, would take legal action against the Petitioner for refund of the compensation paid to him to which he is not entitled. He has relied on the Judgment of this Court reported in Brijlal Kalyanji Bhate and Others Vs. Municipal Council and Another, to submit that, the roads from the lay out would vest with the Municipal Council on nominal payment of compensation.

9. Learned A.G.P. for the State has opposed the Petition.

10. It is not disputed that the Road is from Survey No. 128/1 within the Municipal Council, Osmanabad area. Its ownership with the Petitioner though feebly challenged, does not seem to be seriously disputed by the Respondents. In fact there is nothing on record to suggest that this Survey Number does not belong to the Petitioner. As regards the acquisition of the part thereof for construction of D.P. Road as alleged, the Respondents have not placed any material on record to suggest that there was already a lay out in the said land wherein Roads were in existence as D.P. Road of that width which leading from T.V. Centre to Ramnagar and T.V. Centre to Irrigation Colony. The documents produced on record by the Petitioner do lead to the conclusion that there was acquisition of land for construction of D.P. Road and the compensation was not paid to the owner thereof. In fact the Resolution dated 20/10/1995 shows that there was discussion in the meeting and it was decided unanimously to pay the compensation to the land owner Digamber Ambadas Magar (present Petitioner) for the acquisition of land for construction of D.P. Road which was from Survey No.128. It is impossible to say that all these Resolutions were procured by the Petitioner by playing fraud, unless there is cogent and convincing material on record to show that the said Roads were already in existence and there was no question of acquisition of lands for them as alleged.

11. Even after the filing of the Petition, no such documents leading to the concrete inference that the land was not acquired for the construction of D.P. Road and the Petitioner's claim was fraudulent were produced.

12. Respondent Municipal Council itself has raised a case that the lay out was illegal and the Municipal Council is contemplating action for unauthorized non agricultural use, notices have been served to the plot owners and the persons who have constructed buildings on the said lay out in pursuance to the report of the Collector submitted to this Court on 28/11/2000. This would show that there were no legal roads in existence which could vest in the Municipal Council. At any rate when part of the compensation was paid to the Petitioner, and remaining part thereof was paid during the pendency of the Petition as per Orders of this Court, and when there is no sufficiently cogent material on record to suggest the case raised by the Respondent Municipal Council, the Petition cannot be said to

be unsustainable. The authority referred by the learned counsel for Respondent Municipal Council, cited *supra*, is distinguishable on facts.

13. Therefore, in our opinion, the Petitioner would be entitled for the compensation which has already been paid, the quantum of which could not be disputed by the Respondents. The crucial question however would be, whether the Petitioner is entitled for solatium and interest as claimed.

14. In order to appreciate the controversy, it is necessary to bear in mind that the acquisition even according to the Petitioner was by way of private negotiations. Relevant document executed by the Petitioner and C.E.O. Municipal Council, Osmanmabad has been placed on record vide Exhibit R/1, which shows that the Petitioner had given consent for the acquisition of the said land for road saying that he is owner of the said land and he is ready to part with the possession of the said land in favour of Municipal Council if he is paid the compensation as determined by the Valuation Department and Town Planning Department. It does not even by remote inference suggest that the Petitioner had parted with the possession of the said land under the assumption that he would be paid compensation as determined in pursuance to the provisions of the Land Acquisition Act. Needless to say, that acquisition in the instant case was not under the provisions of the Land Acquisition Act and therefore the provisions thereof would not be attracted. Here is the case where acquisition of the land was by way of private negotiations and with the specific claim of the land owner for compensation as determined by Town Planning Department and Valuation Department. The said compensation has already been paid to the Petitioner and therefore, in our opinion, the question of payment of solatium and future interest in pursuance to the provisions of Land Acquisition Act is not at all warranted. We are aware that Town Planner has submitted calculation of compensation, solatium and interest in terms of the affidavit dated 30/11/2000, however as the Petitioner, in our opinion, is not entitled to claim compensation as per the provisions of Land Acquisition Act, this affidavit has no indicative value. The consent document Exhibit R/1 executed by the Petitioner and C.E.O., Osmanabad Municipal Council, would clearly disentitle the Petitioner from claiming solatium and interest on the compensation amount.

15. In the result, the Petition in respect of Solatium and interest would fail. Accordingly the same is dismissed. Rule is thus partly made absolute.

16. We cannot, however, part with the case unless we record our expectation from the Collector, Osmanabad that he would take further action according to law for the findings recorded by him in his report submitted to this Court dated 28/11/2000.